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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. **2010-437**

14 **CAROL E. SMITH a.k.a**
CAROL E. SMITH-STOUT
15 **P. O. Box 879**
Mountain Ranch, CA 95246
16

A C C U S A T I O N

17 **Registered Nurse License No. 484221**

18 **Respondent.**

19 **Complainant alleges:**

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 **License History**

25 2. On or about August 31, 1992, the Board of Registered Nursing issued Registered
26 Nurse License Number 484221 to Carol E. Smith, also known as Carol E. Smith-Stout
27 ("Respondent"). The license was in full force and effect at all times relevant to the charges
28 brought herein and expired on August 31, 2008. The license has not been renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code"), unless otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

8. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
4 record pertaining to, the substances described in subdivision (a) of this section,
5 in which event the record of the conviction is conclusive evidence thereof.

6 COST RECOVERY

7 9. Code section 125.3 provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 FIRST CAUSE FOR DISCIPLINE

12 (Criminal Conviction)

13 10. Respondent is subject to disciplinary action under Code section 2761, subdivision (f),
14 in that on or about January 13, 2009, in the Superior Court of California, County of Sacramento,
15 in the case entitled, *People of the State of California v. Carol Elizabeth Smith* (Super Ct.
16 Sacramento County, 2008, Case No. 08T03782), Respondent was convicted on her plea of nolo
17 contendere of violating Vehicle Code sections 23152, subdivision (b) (Drive While Having .08%
18 Blood Alcohol Content or More [.31%]), 23578 (Drive a Motor Vehicle with .15% or More
19 Blood Alcohol Content) and 23538, subdivision (b) (Refused Chemical Test—2 allegations), all
20 misdemeanors.

21 The circumstances of the crime are that on or about May 12, 2008, a Sacramento police
22 officer responded to a vehicle accident with injuries. Respondent had collided with two parked
23 vehicles at the Oak Haven Mobile Home Park. Respondent had no recollection of how the
24 accident occurred. Respondent refused to let medical personnel administer first-aid and had to be
25 restrained with handcuffs for medical transport to Sutter General. On October 21, 2008,
26 Respondent was arrested on a warrant for failing to appear at the court date for the above crime.

27 SECOND CAUSE FOR DISCIPLINE

28 (Criminal Conviction Involving the Consumption of Alcohol)

11. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in

1 that Respondent was convicted of a crime involving the consumption of alcoholic beverages, as
2 set forth in paragraph 10, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Use an Alcoholic Beverage and/or Drugs to the Extent or**
5 **in a Manner Dangerous or Injurious to Herself or Others)**

6 12. Respondent is subject to disciplinary action under Code section 2762, subdivision (a),
7 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in
8 that Respondent consumed alcoholic beverages and/or drugs to an extent or in a manner
9 dangerous or injurious to herself or others, as set forth paragraph 10, above.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Registered Nursing issue a decision:

13 1. Revoking or suspending Registered Nurse License Number 484221 issued to Carol E.
14 Smith, also known as Carol E. Smith-Stout;

15 2. Ordering Carol E. Smith, also known as Carol E. Smith-Stout, to pay the Board the
16 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
17 125.3; and,

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: 3/17/10

Louise R. Bailey
LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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